

Falls Church, Virginia 22041

File: D2000-048

Date: JUL - 8 2003

In re: MIGUEL GADDA, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF GENERAL COUNSEL: Jennifer J. Barnes, Esquire

ON BEHALF OF DHS: Javier Balasquide, Appellate Counsel

The respondent, Miguel Gadda, is subject to a final order of disbarment by the Supreme Court of California, and has been removed from the roll of attorneys authorized to practice before the United States District Court for the Northern District of California. For the reasons that follow, Gadda will be expelled from practice before the Board, the Immigration Courts, and the Department of Homeland Security (the "DHS," formerly the Immigration and Naturalization Service).

BACKGROUND

On July 27, 2001, a judge of the California State Bar Court, Hearing Department, recommended that Gadda be disbarred and ordered him placed on involuntary inactive enrollment. In immigration cases, according to Judge Eugene E. Brott of the California State Bar Court, the respondent "engaged in a continuous course of conduct which included client abandonment, lack of competence and financial irresponsibility." July 27, 2001, Order at 36. Judge Brott noted that "the serious acts of misconduct" committed by Gadda began in 1994 and continued until 2000. *Id.* Although Gadda was well-liked, and courteous to the court and opposing counsel, "[he] does not fully accept what others have said about the magnitude of the harm he has caused - and the potential for more harm if he continues his same course of conduct." *Id.* at 35. The court noted that Gadda had been disciplined in 1990 for the same conduct. *Id.* at 36; *see Gadda v. State Bar*, 50 Cal.3d 344(1990).

Consequently, on September 14, 2001, the Office of General Counsel (OGC) for the Executive Office for Immigration Review initiated disciplinary proceedings against the respondent and petitioned for his immediate suspension from practice before the Board of Immigration Appeals and the Immigration Courts. On September 20, 2001, the DHS asked that the respondent be similarly suspended from practice before that agency. On October 2, 2001, we suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS, pending final disposition of this proceeding. We declined to reconsider this decision on December 18, 2001, and February 26, 2002.

The OGC filed a Notice of Intent to Discipline, pursuant to 8 C.F.R. § 1003.105, on February 6, 2002. Gadda requested a hearing on the charges, and an Immigration Judge was assigned to the case as the "adjudicating official." 8 C.F.R. § 1003.106(a)(1). On May 2, 2002, the OGC filed a

motion to amend the Notice of Intent to Discipline, based on the fact that the United States District Court for the Northern District of California entered an order on March 29, 2002, removing Gadda's name from the role of attorneys authorized to practice before it.

The adjudicating official entered the hearing of the transcript before Judge Brott into the record, as agreed upon by the parties. The parties were given an opportunity to identify any material fact which would necessitate an evidentiary hearing. On August 22, 2002, the adjudicating official issued an order suspending Gadda indefinitely from practice before the Board, Immigration Courts, and DHS. The adjudicating official found that the transcript, which runs 1,000 pages, reveals that "[Gadda] had ample opportunities to question or call witnesses . . . The judge's conclusions are well supported by the facts in the record. There is no suggestion that [Gadda] was treated unfairly or that his due process rights have been violated in any way." The adjudicating official further stated that "[Gadda] has not denied any of the factual findings made in Judge Brott's order and there is simply no issue as to any material fact which would require an evidentiary hearing."

On August 26, 2002, the Review Department of the California Bar Court affirmed Judge Brott's decision that Gadda should be disbarred. *In Re Gadda*, 2002 WL 31012596, 4 Cal. State Bar Ct. Rptr. 416 (Aug. 26, 2002). On September 19, 2002, Gadda filed an appeal with the Board of the adjudicating official's August 22, 2002, decision. See 8 C.F.R. § 1003.106(c) (Board has jurisdiction to review decision of adjudicating official, and Board conducts de novo review of the record).

On January 22, 2003, the California Supreme Court disbarred Gadda from the practice of law in that state. The OGC sought to again amend the Notice of Intent to Discipline on January 29, 2003, based on this action. On February 11, 2003, Gadda filed a motion with the Board, arguing that (1) the order of the California Supreme Court was not final; (2) the Board should hold proceedings in abeyance pending a decision in a lawsuit he filed; and (3) he should have a hearing on the charges in the January 29, 2003, Notice of Intent to Discipline.

The parties thereafter filed briefs concerning Gadda's appeal of the adjudicating official's August 22, 2002, decision.

ANALYSIS

A. There are Grounds for Discipline.

As alleged by the OGC in its January 29, 2003, Notice of Intent to Discipline, Gadda is subject to a final order of discipline in the jurisdiction of the state in which he is admitted to practice. 8 C.F.R. § 1003.102(e)(1). We find that there are therefore grounds for discipline of Gadda.

In his brief to the Board, Gadda argues that the California State Bar cannot discipline him, that only the California Supreme Court can issue a final order of disbarment (Respondent's Br. at pp. 9-23). Even before Gadda filed his brief, these arguments had become moot in light of the California Supreme Court's January 22, 2003, decision to disbar Gadda from the practice of law in that state.

Gadda has argued that the disbarment order of the California Supreme Court is not "final", because he has appealed this determination to the United States Supreme Court. This is incorrect, where the Supreme Court's decision whether to grant a writ of certiorari is discretionary. *Duquesne Light Co. v. Barash*, 488 U.S. 299, 306, 307 fn. 4 (1989)(persons aggrieved by state court judgments file petition for certiorari with the United States Supreme Court, not appeal); 28 U.S.C. § 1257. Similarly, Gadda has provided no reason why our decision should be held in abeyance pending a lawsuit he has filed in the Ninth Circuit Court of Appeals.

Gadda has also argued that he should receive a hearing concerning the OGC's January 29, 2003, amended Notice of Intent to Discipline, which sought sanctions based on the California Supreme Court's disbarment of Gadda. Although the action of the California Supreme Court took place after the adjudicating official's August 22, 2002, decision, we see no reason for a hearing on the charges stemming from the California Supreme Court's disbarment order. Where the OGC brings proceedings based on a final order of disbarment, such an order creates a rebuttable presumption that disciplinary sanctions should follow. 8 C.F.R. § 1003.103(b)(2). Such presumption can be rebutted only with a showing that the underlying disciplinary proceeding resulted in a loss of due process, that there was an infirmity of proof establishing the misconduct, or discipline would result in injustice. *Id.* The adjudicating official reviewed the voluminous record presented to the State Bar Court judge, and determined that Gadda was treated fairly, and there were no issues of material fact that had been raised by Gadda. Where the disbarment order of the California Supreme Court was an endorsement of actions taken against Gadda by the California State Bar, and where the adjudicating official has found the proceedings before the State Bar to have been conducted fairly, there is no need for a hearing. Indeed, Gadda has identified no issues that would require an evidentiary hearing.

In his brief to the Board, Gadda argues that, as he practices immigration law, the authorities in California lack jurisdiction to suspend him from practice (Respondent's Br. at pp. 23-27). We addressed this argument in our December 18, 2001, decision. Pertinent regulations provide that an alien may be represented by an attorney in immigration proceedings. 8 C.F.R. § 1292.1. The regulations further provide that an "attorney" is a person who is a member in good standing of a State bar. 8 C.F.R. § 1001.1(f). There is no basis for arguing that, simply because he practices immigration law, the respondent is not under the jurisdiction of the California State Bar. *See Waters v. Bar*, 747 P.2d 900 (Nev. 1987) (federal attorney who was a member of Nevada State Bar subject to discipline by state's Supreme Court. "There is no question that an attorney may be subjected to discipline from any bar association to which he is a member"); *citing Theard v. United States*, 354 U.S. 278 (1957); *In re Sawyer*, 260 F.2d 189 (9th Cir.1958), *reversed on other grounds*, 360 U.S. 622 (1959).

Gadda's Expulsion From Practice Is Appropriate.

In his August 22, 2002, order, the adjudicating official suspended Gadda indefinitely from practice before the Board, the Immigration Courts, and the DHS. In its amended Notice of Intent to Discipline, and its brief to the Board, the OGC seeks to have Gadda expelled from practice before

those entities. *See* 8 C.F.R. § 1003.101(a)(1)(expulsion is one sanction that may be applied against an attorney). We agree that expulsion is the correct sanction to be applied against Gadda, based on his egregious and repeated acts of professional misconduct over a number of years, and his disbarment by the Supreme Court of California, as well as the United States District Court for the Northern District of California. As noted by the Review Department of the California Bar Court, *In Re Gadda*, 2002 WL 31012596, 4 Cal. State Bar Ct. Rptr. 416 (Aug. 26, 2002), "[Gadda] engaged in multiple acts of misconduct over an extended period of time . . . [Gadda] demonstrated indifference toward rectification of or atonement for the consequences of his misconduct . . . we . . . also doubt that any discipline less than disbarment can adequately protect the public against future acts of misconduct of the type which [Gadda] has repeatedly committed. . . . There is no evidence that [Gadda] is cognizant of the seriousness of his misconduct. . . . He refuses to take responsibility for his conduct."

ORDER: The respondent is expelled from practice before the Board, the Immigration Courts, and the DHS.



FOR THE BOARD